

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**BAXLEY CORPORATION, LLC

DEBTOR.**

**CASE NO. 22-00397-5-DMW
CHAPTER 7**

MOTION FOR TURNOVER

NOW COMES, Baxley Leasing, LLC, and Martha Ginger Baxley (collectively “Movants”), by and through counsel, and respectfully move this Court for an Order directing (i) CITIZENS ONE BANK or its agents including, but not limited to, LENDERS & FLEET SERVICES, INC., to turnover a 2016 Dodge Ram Truck (“Truck”) to Movants, pursuant to 11 U.S.C. § 542(a), the Order Granting Trustee’s Motion to Approve Compromise and Settlement with Baxley Leasing, LLC and Baxley Constructions Co., Inc., Pursuant to Fed. R. Bank. P. 9019 [DE-237], and Order Allowing Motion to Extend Stay [DE-292]. In support of this, Movants state to the Court:

1. On February 23, 2022, Baxley Corporation LLC (“Corp”) filed a petition for relief under Chapter 7 of the Bankruptcy Code (the “Petition Date”) and James B. Angell is the duly appointed Chapter 7 Trustee.

2. On March 9, 2022, the Trustee file an Adversary Proceeding asserting that the Debtor was an alter ego of the Debtor.

3. On May 25, 2022, the Trustee filed a Motion to Approve Compromise and Settlement with Baxley Leasing, LLC and Baxley Construction Co., Inc., Pursuant to Fed. R. Bankr. P. 9019 [DE-205].

4. The Order Granting Trustee’s Motion to Approve Compromise was entered on June 28, 2022 [DE-237].

5. The Settlement, among other things, involved Baxley Leasing providing a promissory note in the amount of \$249,461.37 payable to the Debtor’s Estate and secured by certain equipment and vehicles, including the 2016 Dodge Ram Truck and 2010 BMW X5 (collectively “Vehicles”), owned or to be acquired by Baxley Leasing, LLC. In essence, Baxley Leasing was buying the equity of the Equipment and Vehicles from the Trustee for the benefit of the Debtor’s Estate.

6. To protect this interest, it was agreed that Movants with the support of the Trustee would move the Bankruptcy Court to extend the Automatic Stay.

7. The automatic stay provided by 11 U.S.C. § 362(a)(3) is designed to stop “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”

8. Here, the Equipment and Vehicles, including the Truck, are owned by Baxley Leasing and the equity is property of the Debtor’s Estate pursuant to the security agreement provided under the settlement agreement.

9. On or about June 10, 2022, Movants paid Citizens One and requested the Truck be handed over.

10. Citizens One refused to deliver the Truck to Movants.

11. Accordingly, Movants ask this Court for an Order requiring Citizens One or any other party having possession of the Truck immediately turnover the Truck to Movants.

WHEREFORE, Baxley Leasing, LLC, and Martha Ginger Baxley, respectfully ask this Court enter an Order requiring Citizens One or any other party having possession of the Truck immediately turnover the Truck to Movants or be sanctioned for violations of the Automatic Stay in an amount determined by this Court.

Respectfully submitted, this the 30th day of September 2022.

EVERETT GASKINS HANCOCK LLP

/s/ William H. Kroll

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N.C. State Bar No.

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Martha Virginia Baxley

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NOTICE OF MOTION FOR TURNOVER

NOTICE IS HEREBY GIVEN that Baxley Leasing, LLC, and Martha Baxley filed a **Motion for Turnover** on September 30, 2022, to protect the equity in certain Equipment and Vehicles that is property of the Debtor's Estate pursuant to the security agreement provided under a settlement agreement.

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of this Court on or before **14 days** from the date of this Notice.

This 30th day of September 2022.

s/William H. Kroll
WILLIAM H. KROLL
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Notice** and **Motion for Turnover** was electronically filed through CM/ECF or served via the U.S. postal service, postage prepaid, to the parties attached as **Exhibit 1** and listed below, as noted:

Via CM/ECF:

Bankruptcy Administrator

James B. Angell
Howard Stallings, From, Atkins,
Angell & Davis, P.A.
Chapter 7 Trustee

Via Certified U.S. postal service, postage prepaid and email:

Citizen One Bank
Attn: Manager, Agent, Officer
One Citizens Bank Way, JCA110
Johnston, RI 02919

Lenders & Fleet Services, Inc.
Attn: Manager, Agent, Officer
PO Box 814
Branford, CT 06405

Email:
latestagecollections@citizensbank.com

Lenders & Fleet Services, Inc.
Attn: Manager, Agent, Officer
20 NE Industrial Road
Branford, CT 06405

Email: jrudden@lendersfleet.com

This the 30th day of September 2022.

/s/ William H. Kroll
William H. Kroll